IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.1091 OF 1993

1) M/s.Radico Khaitan Limited)
formerly known as the Rampur)
Distillery & Chemical Co. Ltd.)
having its registered office at)
Bareilly Road, Rampur- 244 901,)
(U.P.) and their Bombay Office at)
Eruch Shaw Building, 4th Floor,)
249 Dr.D.N.Road, Mumbai - 400 001.)
)
)
2) Mr.Khushal Singh, Executive)
Director of the Petitioner No.1,)
residing at A-1, Kalindi Colony,)
New Delhi - 110 065)..Petitioners.

V/s.

1) Union of India, having its office)
Aayakar Bhavan, M.K. Road,)
Bombay - 400 020.)
)
2) Collector of Customs (Appeals))
)
3) Collector of Customs)
)
4) Asstt.Collector of Customs)
Appraising Group 2B,)
Respondent Nos.2 to 4 having)
their office at New Custom)
House, Annexe Building, Ballard)
Estate, Bombay - 400 038.)
)
5) The Trustees of Port of Bombay,)
Bombay Port Trust, Ballard Estate,)
Bombay - 400 038.)..Respondents.

Mr.S.N.Kantawala i/b.M/s.Kantawala & Co. for petitioners.

Mr.R.V.Desai, senior advocate with Mrs.S.V.Bharucha for Union of India.

Mr.Hegde for respondent No.5.

AND

WRIT PETITION NO.1314 OF 1999

1) M/s.Radico Khaitan Limited formerly known as the Rampur Distillery & Chemical Co. Ltd. having its registered office at Bareilly Road, Rampur- 244 901, (U.P.) and their Bombay Office at C/o. Sukh Sagar, Office Business Service Pvt. Ltd., 17, Sukh Sagar Hughes Road, Mumbai - 400 007. ..Petitioners.

V/s.

1) Union of India (Through the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Branch Secretariat, Aayakar Bhavan Annexe, 2nd Floor, New Marine Lines, Mumbai - 400 020.

2) The Customs, Excise and Gold (Control), Appellate Tribunal, West Zonal bench, PNB House, Sir P.M. Road, Fort, Mumbai - 400 001

3) Commissioner of Customs (I) New Custom House, Ballard Estate, Mumbai - 400 038.

4) Asstt.Collector of Customs Appraising Group 2B, New New Custom House, Ballard Estate, Mumbai - 400 038. ..Respondents.

Mr.S.N.Kantawala i/b.M/s.Kantawala & Co. for petitioners.

Mr.R.V.Desai, senior advocate with Mr.A.J.Rana, senior advocate, R.Chavan and Mrs.Bharucha for respondents.

CORAM : V.C. DAGA AND

J.P.DEVADHAR, JJ.

DATED : 15TH MARCH, 2005.

ORAL JUDGMENT (PER J.P. DEVADHAR, J.)

1. These two Writ Petitions which relate to import of American Oak Bourbon Barrels in shooks (hereinafter referred to as 'the said goods' for short) were taken up together for final hearing.

2. In Writ Petition No.1091 of 1993 the dispute pertains to the refusal on the part of the customs authorities to issue detention certificate in respect of a consignment of the said goods for the period from 22/10/1992 to 4/11/1992. According to the revenue the detention certificate for the aforesaid period cannot be granted because the petitioner had not furnished the import licence during that period. However, it is the case of the petitioner that the import licence was submitted along with the bills of entry and, therefore, the denial of detention certificate for the period from 22/10/1992 to 4/11/1992 is totally erroneous.

3. In Writ Petition No.1314 of 1999 the petitioner has challenged the order of CEGAT dated 8/3/1999 wherein the Tribunal while upholding the order-in-original has held that the said goods are liable for confiscation under section 111(d) of the Customs Act but remanded the matter to the Commissioner to determine afresh the appropriate redemption fine payable on the said goods as per the provisions of the Customs Act.

4. During the course of arguments, learned counsel for the petitioner fairly stated that the petitioners are not aversed to the quantification of redemption fine by the Commissioner of Customs and while doing so the Commissioner may be directed to consider the grant of detention certificate for the period 22/10/1992 to 4/11/1992 in the light of the contention of the petitioner that the import licence was submitted along with the bills of entry. Learned counsel for the revenue could not oppose the fair suggestion made by the counsel for the petitioner.

5. Having regard to the facts and circumstances of the case, we are of the opinion that the proposal put forth by the advocate for the petitioners is just and

proper. Accordingly, we dispose of both the aforesaid Writ Petitions by directing the Commissioner of Customs to quantify the redemption fine payable by the petitioner in respect of the confiscated goods as per the order of the Tribunal dated 8/3/1999 [Exhibit - D in Writ Petition No.1314 of 1999]. We further direct the Commissioner of Customs to consider the case of the petitioner that the import licence was furnished along with the bills of entry and if found true, then grant the detention certificate to the petitioner for the period from 22/10/1992 to 4/11/1992 which is the subject matter of Writ Petition No.1091 of 1993.

6. Both the aforesaid Writ Petitions are disposed of in the above terms with no order as to costs.

Sd/-

(V.C. DAGA, J.)

Sd/-

(J.P.DEVADHAR, J.)